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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 vs.

13 RONALD STEVEN SCHOENFELD,

14 Defendant.

15 Case No. 2:20-cr-00150-KJM

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**DEFENDANT RON SCHOENFELD'S
SENTENCING MEMORANDUM and
OBJECTIONS TO PSR**

1 **I. INTRODUCTION**

2 Ron Schoenfeld is a 65-year-old man who foolishly let his desire to help a family member, and
3 himself, overwhelm his duty of loyalty to his employer, PG&E. Ron Schoenfeld thought that he could
4 assist his cousin's business and actually help PG&E fulfill its commitment to spreading business away
5 from male dominated firms by assisting his cousin in navigating the PG&E bidding process. That
6 business provided quality, and cost competitive, trucking services and was actually nominated twice for
7 the supplier of the year award. We are not excusing what Ron Schoenfeld did. He violated his duty of
8 loyalty to his employer, but as he was assisting his cousin, he did not think he was stealing from PG&E;
9 and PG&E did not lose money as a result of Schoenfeld's conduct. Ron Schoenfeld thought he was just
10 violating a rule in the handbook rather than engaging in criminal behavior.

11 Ron Schoenfeld was born in the Bay Area 65 years ago. He has maintained stable employment,
12 raised a blended family and has been a contributing member of the community. There is no need for a
13 prison sentence to emphasize the duty of loyalty owed to an employer.

14 **II. THERE SHOULD BE NO ADJUSTMENT FOR ABUSE OF TRUST**

15 We do not believe there should be an abuse of trust enhancement. The abuse of trust
16 enhancement is intended to apply when someone is a fiduciary or in a "position of public or private trust
17 characterized by professional or managerial discretion." USSG § 3B1.3 Note 1. The new language of
18 the application notes "places a significant limit on the types of positions subject to the abuse-of-trust
19 enhancement." See e.g. United States v. Contreras, 581 F.3d 1163, 1166 (9th Cir. 2009). While Ron
20 Schoenfeld was more than a low-level clerk, he was not a fiduciary or in a position of public or private
21 trust. He was a transportation manager with limited discretionary authority. Note 1 to U.S.S.G. § 3B1.3
22 clarifies that the abuse of trust adjustment only applies if the position of trust "contributed in some
23 significant way to facilitating the commission or concealment of the offense." Ron Schoenfeld was a
24 transportation manager with limited discretionary authority. He was not a fiduciary or employee with
25 "substantial discretionary judgment that is ordinarily given considerable deference." The adjustment
26 focuses on a person of power, a fiduciary, using that position to take advantage of people with less power
27 using his or her services. Here the power relationship is completely reversed with the intent of the
28 adjustment. PG&E is a multibillion-dollar corporation, that employed the services of a third-party

1 contract manager to supervise logistics contracting. Schoenfeld's "taking" from PG&E was his duty of
2 loyalty and honest services. That taking is similar, and we may be exaggerating here, to individuals who
3 jump family members to the head of the installation que. Schoenfeld did not take from those with less
4 power. He took an intangible right from PG&E, a far more powerful entity. Schoenfeld's authority was
5 limited and supervised. The vast majority of contracts with Silver were approved by a Portfolio
6 Manager, a Director of Sourcing, or a Senior Vice President of Shared Services depending on the value
7 of the contract and the particular line of business. The contracting system was designed to minimize
8 Schoenfeld's discretion. The contracts were not actually between Silver and PG&E, but between Silver
9 and a third-party contract management agency, Logica. Silver and All American were twice nominated
10 as the Supplier of the Year. The issue was not the quality of the contracted services. It was Schoenfeld's
11 failure to disclose the kickbacks from his cousin. Schoenfeld was a disloyal employee. He was not an
12 embezzling fiduciary.

13

14 **III. THE GOVERNMENT AGREES THAT A DOWNWARD DEPARTURE FOR
COOPERATION IS APPROPRIATE.**

15 Paragraph 79 of the plea agreement fails to recognize that the government will be moving for a
16 downward departure in this case. Ron Schoenfeld did not commit this crime by himself; and he admitted
17 his responsibility both to his employer and to the government. He made his admission to his employer,
18 years ago, in October of 2014; and he more recently agreed to be debriefed by the government. During
19 that debriefing, he again took full responsibility for violating PG&E's rules and agreed to testify, if
20 testimony would be required. For its own reasons, the government chose not to indict Deborah Silver,
21 who earned far more money than Ron Schoenfeld; and that may be the reason for the relatively small
22 amount of departure recommended, but nevertheless, the government has acknowledged Ron
23 Schoenfeld's cooperation and joins with the defense in requesting a departure. As the Court is well
24 aware, once the government moves for a downward departure, the Court is free to consider that motion,
25 but is not limited by the amount of a departure that the government suggests. See e. g. United States v.
26 Udo, 963 F.2d 1318, 1319 (9th Cir. 1992).

27 Here, because of the length between the time of the offenses, initial omission, and today,
28 Schoenfeld's sincere and forthright cooperation, and the government's failure to prosecute the person

1 who received the largest financial benefit from the offense. A substantial downward departure is
2 warranted.

3

4 **IV. RON SCHOENFELD'S GUIDELINES AS REFLECTED IN THE PSR ARE NOT
5 REFLECTIVE OF HIS CRIMINAL CONDUCT AS THEY OVERSTATE HIS
6 CRIMINAL LIABILITY AND LIKELIHOOD OF RECIDIVISM**

7 **A. The Circumstances of the Offense and the Offender, and the Coronavirus Pandemic are
8 reasons for a Variance in this case.**

9 In Booker, the Supreme Court held that district courts must consider the guideline range as
10 advisory, not mandatory, and that they must also consider the other directives set forth in 18 U.S.C. §
11 3553(a). United States v. Booker, 543 U.S. 220 (2005).

12 Section 3553(a) requires courts to “impose a sentence sufficient, but not greater than necessary,”
13 to comply with the four purposes of sentencing set forth in Section 3553(a)(2):

14 (A) retribution (to reflect seriousness of the offense, to promote respect for the
15 law, and to provide “just punishment”);
16 (B) deterrence;
17 (C) incapacitation (“to protect the public from further crimes”); and
18 (D) rehabilitation (“to provide the defendant with needed educational or
19 vocational training, medical care, or other correctional treatment in the most
20 effective manner”)

21 The sufficient-but-not-greater-than-necessary requirement is often referred to as the “parsimony
22 provision.” The parsimony provision is not just another factor to be considered along with the others set
23 forth in Section 3553(a) – it sets an independent limit on the sentence a court may impose. Kimbrough v.
24 United States, 552 U.S. 85, 101 (2007) (referring to the clause as an “overarching provision” that, post-
25 Booker, “permits the court to tailor the sentence” to the individual defendant and crime in light of the
26 goals of the Sentencing Reform Act of 1984).

27 The Sentencing Commission itself has recognized the need for alternative sentences that do not
28 involve a prison term stating:

29 Effective alternative sanctions are important options for federal, state, and local
30 criminal justice systems. For the appropriate offenders, alternatives to
31 incarceration can provide a substitute for costly incarceration. Ideally,
32 alternatives also provide those offenders opportunities by diverting them from
33 prison (or reducing time spent in prison) and into programs providing the life
34 skills and treatment necessary to become law-abiding and productive members of
35 society.

1 <https://www.ussc.gov/research/research-publications/2009-report-alternative-sentencing-federal-criminal-justice-system> (last accessed October 29, 2020).

3 In this case, a probationary sentence conditioned upon a period of house arrest is more than
4 sufficient to satisfy the goals of sentencing.

5 In determining if the sentence is minimally sufficient to comply with Section 3553(a)(2) purposes
6 of sentencing, a court should consider several factors listed in Section 3553(a). These are:

7 (1) the nature and circumstances of the offense and the history and characteristics
8 of the defendant;
(2) the kinds of sentence available;
(3) the guidelines and policy statements issued by the Sentencing Commission,
9 including the (now non-mandatory) guideline range;
(4) the need to avoid unwarranted sentencing disparity; and
10 (5) the need to provide restitution where applicable.

11 18 U.S.C. § 3553(a)(1), (a)(3), (a)(5)-(7).

12 Neither the statute itself nor Booker suggests that any one of these factors is to be given greater
13 weight than any other factor. However, it is important to remember that all factors are subservient to
14 Section 3553(a)'s mandate to impose a sentence not greater than necessary to comply with the four
15 purposes of sentencing.

16 Here, all of the Section 3553 factors call out for a lenient sentence in this case.

17 **B. The Nature and Circumstances of the Offense and the Offender and the Coronavirus
18 Pandemic Indicate that a Sentence of Probation is Appropriate in this Case**

19 The offense of conviction in this case is conspiracy to commit wire fraud. Ron Schoenfeld did
20 not steal funds from PG&E and PG&E was very happy with the services his cousin provided. Ron
21 Schoenfeld was foolish and stupid, but his crime was not designed to hurt PG&E.

22 Research regarding white-collar offenders found no difference in the deterrent effect of probation
23 and that of imprisonment. See David Weisburd et al., Specific Deterrence in a Sample of Offenders
24 Convicted of White-Collar Crimes, 33 Criminology 587 (1995); see also Zvi D. Gabbay, Exploring the
25 Limits of the Restorative Justice Paradigm: Restorative Justice and White Collar Crime, 8 Cardozo J.
26 Conflict Resol. 421, 448-49 (2007)(“[T]here is no decisive evidence to support the conclusion that harsh
27 sentences actually have a general and specific deterrent effect on potential white-collar offenders.”).
28 Accordingly, there is no need for a prison sentence in the case.

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2 **C. The Years of Uncertainty and Financial Penalties in this Case are Sufficient to Deter**
2 **Others**

3 This prosecution and the press release about this prosecution have already sent a strong message
4 that there are real penalties for not disclosing relationships to an employer. There is no need for a term
5 of incarceration to send a message to others. That message has already been sent and heard, not only by
6 the general public, but also by the employees of PG&E.

7 **D. There is Little Chance of Recidivism in this Case**

8 This case arose from an unusual set of circumstances where PG&E was looking for female
9 contractors and Ron Schoenfeld was in a position to assist his female cousin who owned a trucking
10 business. He viewed his assistance to his cousin as a win for her, a win for PG&E and a win for himself.
11 The results of his crimes have been devastating to Ron Schoenfeld and his entire extended family. A
12 google search for Ron Schoenfeld used to return results showing his employment and community
13 service. That search now returns headlines about his guilty plea and potential jail sentence. Ron
14 Schoenfeld was a gregarious outgoing character with lots of friends at PG&E and a member of a tight
15 knit family. His relationship with portions of his family has been shattered and he has been shunned by
16 his former friends at PG&E. This was really a one of a kind, situational event and there is no need to
17 deter Ron Schoenfeld from similar conduct in the future. Moreover, as a practical matter, Ron
18 Schoenfeld is retired and probably unemployable. As he indicated in this statement accepting
19 responsibility, Ron Schoenfeld and his entire family have learned a valuable lesson.

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21 **E. The Circumstances of the Offense and the Offender, and the Coronavirus Pandemic are**
21 **reasons for a Variance in this case.**

22 Finally, and significantly, the Coronavirus situation in the Bureau of Prisons is an additional
23 reason for a variance. If Schoenfeld would be sentenced to report to prison and enter custody before the
24 coronavirus is meaningfully controlled or a vaccine is readily available, such a sentence would violate 18
25 U.S.C. § 3553 as unjust punishment, as well as the Eighth Amendment. The United States Supreme
26 Court has held that the risk of contracting a serious disease may indeed constitute an unsafe, life-
27 threatening condition that violates the Eighth Amendment. Helling v. McKinney, 509 U.S. 25, 33
28 (1993). The Supreme Court has stated that it would "be odd to deny an injunction to inmates who plainly

1 proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened
2 to them." Id.

3 The Court is familiar with the many motions from inmates seeking compassionate release, and the
4 status of the Bureau of Prison's response to the coronavirus and conditions in the BOP, as well as the
5 Court's own Orders granting Compassionate Release Motions, See e.g. United States v. Pikard, 2:11-cr-
6 00449-KJM. Other district courts have issued similar Orders reducing prison sentences due to the
7 pandemic:

8 By now it almost goes without saying that we should not be adding to the prison
9 population during the COVID-19 pandemic if it can be avoided. Several recent
10 court rulings have explained the health risks—to inmates, guards, and the
11 community at large—created by large prison populations. See, e.g., United States
12 v. Stephens, No. 15-cr-95-AJN, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19,
13 2020); United States v. Barkman, No. 3:19-cr-0052-RCJ-WGC, 2020 U.S. Dist.
14 LEXIS 45628 (D. Nev. Mar. 17, 2020); In the Matter of Extradition of Toledo
15 Manrique, No. 3:19-mj-71055-MAG-1 (TSH), 2020 WL 1307109 (N.D. Cal.
16 Mar. 19, 2020). The chaos has already begun inside federal prisons—
17 inmates and prison employees are starting to test positive for the virus, quarantines are being
18 instituted, visits from outsiders have been suspended, and inmate movement is
being restricted even more than usual. See, e.g., Sadie Gurman, Bureau of Prisons
Imposes 14-Day Quarantine to Contain Coronavirus, Wall Street Journal (March
24, 2020), <https://www.wsj.com/articles/bureau-of-prisons-imposes-14-day-quarantine-to-contain-coronavirus-11585093075>. To avoid adding to the chaos
and creating unnecessary health risks, offenders who are on release and scheduled
to surrender to the Bureau of Prisons in the coming months should, absent truly
extraordinary circumstances, have their surrender dates extended until this public
health crisis has passed.

19 Order Deferring Surrender Date, United States v. Garlock, Case No. 3:18-cr-00418-VC (N.D. Cal. March
20 25, 2020), Doc. No 41.

21 Schoenfeld's documented medical conditions indicate he is at a high risk for both infection and a
22 bad outcome should he be infected. He has sleep apnea, high blood pressure, diabetes, is obese, and 65.
23 Unfortunately these factors work together synergistically to place Schoenfeld in a high-risk population.
24 According to his doctor who began treating Schoenfeld before anyone even thought about the current
25 pandemic: "His past medical history if significant in that it includes the following: hypertension, diabetes
26 mellitus, hyperlipidemia, morbid obesity, and obstructive sleep apnea. Given these perilous times with
27 the current COVID19 pandemic, he is at severe risk of cardiopulmonary complications should he be
28 exposed to this virus which of course would be aggravated in the event of his confinement."

1 Not only have jails been described as the perfect petri dishes for COVID-19 infection¹, the
2 process where inmates go from one jail to another in transport to their final destination contributes to the
3 spread of the virus in each of those jails and to each separate potentially infected population of inmates,
4 guards, and their contacts.

5 In Incarceration And Its Disseminations: COVID-19 Pandemic Lessons From Chicago's Cook
6 County Jail by Eric Reinhart and Daniel Chen² the Abstract states:

7 Abstract: "Jails and prisons are major sites of novel coronavirus (SARS-CoV-2)
8 infection. Many jurisdictions in the United States have therefore accelerated
9 release of low-risk offenders. Early release, however, does not address how arrest
10 and pre-trial detention practices may be contributing to disease spread. Using
11 data from Cook County Jail, in Chicago, Illinois, one of the largest known nodes
12 of SARS-CoV-2 spread, we analyze the relationship between jailing practices and
13 community infections at the zip-code level. We find that jail cycling is a
14 significant predictor of SARS-CoV-2 infection, accounting for 55 percent of the
15 variance in case rates across zip codes in Chicago and 37 percent in Illinois. By
16 comparison, jail cycling far exceeds race, poverty, public transit utilization, and
17 population density as a predictor of variance. The data suggest that cycling
18 through Cook County Jail alone is associated with 15.7 percent of all documented
19 novel coronavirus disease (COVID-19) cases in Illinois and 15.9 percent in
20 Chicago as of April 19, 2020. Our findings support arguments for reduced
21 reliance on incarceration and for related justice reforms both as emergency
22 measures during the present pandemic and as sustained structural changes vital
23 for future pandemic preparedness and public health."

24 COVID-19 is materially affecting the operations of all BOP facilities, as reflected by the fact that
25 the Bureau has placed all facilities on lockdown. Social and legal visits are suspended. Inmate internal
26 movement is suspended. Official staff training and travel is suspended.³ Although some facilities have
27 already experienced mass outbreak and multiple deaths, this does not diminish COVID-19's impact on
28 those facilities that are not there, yet, and transfer to home confinement is not a zero-sum game. As the
Attorney General exhorted, "time is of the essence."⁴

Any government claim that inmates are safe in custody is contradicted by the realities of
institutional confinement, BOP's documented failure to provide adequate care, and the consensus of

¹ <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html> (last accessed October 29, 2020).

² Available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00652> (last accessed October 29, 2020).

³ BOP Implementing Modified Operations. https://www.bop.gov/coronavirus/covid19_status.jsp (last accessed October 29, 2020)

⁴ Barr 4/3/2020 Memo at 2.

1 public health experts that deincarceration is necessary to slow COVID-19's transmission. As of the date
2 of this writing, the BOP reports that more than twenty thousand inmates and staff have been infected
3 with the corona virus and 132 people have died.⁵ The BOP infection rate is nearly 5 times greater when
4 compared to the infection rate of the rest of the United States population.⁶ In short, "our jails are petri
5 dishes."⁷

6 When asked whether the BOP's figures "could be relied upon as an accurate reflection of the
7 number of inmates and staff that are infected," BOP Public Information Supervisor Sue Allison
8 acknowledged that "reporting of cases while tied to positive cases, does not necessarily account for
9 unconfirmed (non-tested) cases."⁸ As the district court noted in United States v. Esparza, "testing inside
10 prisons has been scant except for people who self-report symptoms — which means that statistics about
11 the number of infections already in BOP facilities are largely meaningless." United States v. Esparza,
12 No. 1:07-cr-00294-BLW, 2020 U.S. Dist. LEXIS 65271, at *7 (D. Idaho Apr. 7, 2020); see also Order at
13 5, United States v. Caddo, No. 3:18-cr-08341-JJT, ECF No. 174 (D. Ariz. Mar. 23, 2020) ("it is
14 unknowable whether BOP detainees or inmates have Covid-19 until they are tested, and BOP has not
15 conducted many or any such tests because, like the rest of the country, BOP has very few or no actual
16 Covid-19 test packets").

17 Accordingly, the likelihood of a serious and undeserved adverse outcome of incarceration is a real
18 reason, recognized by Congress, to vary from the sentencing guidelines in this case.

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5 <https://www.bop.gov/coronavirus/> accessed 11.2.2020

6 https://federaldefendersny.org/assets/uploads/BOP_COVID-19_Charts_and_Graphs.8.28.pdf at page 5.

7 <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html> (last accessed October 29, 2020).

8 Walter Pavlo, Bureau of Prisons Underreporting COVID-19 Outbreaks in Prison, FORBES (Apr. 1, 2020), available at <https://www.forbes.com/sites/walterpavlo/2020/04/01/bureau-of-prisons-underreporting-outbreaks-in-prison>. (last accessed October 29, 2020).

F. CONCLUSION

Under the circumstances of this case, where the object was not to take the money and run, but rather to provide assistance to both his employer and his cousin, it is unnecessary to incarcerate Ron Schoenfeld. Accordingly, we request the Court impose a probationary sentencing possibly supplemented by a period of home confinement.

Dated: November 02, 2020

Respectfully submitted,

/s/
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